

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 729 of 2023

Prabhat Kumar Sharan Son of Shambhu Sharan Prasad, Resident of Village-
Purvi Gopalpur near South of the house of Dr. K.D, Singh, P.S- Town,
District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Additional Director General of Police, Headquarter, Bihar, Patna.
4. The Deputy Inspector General of Police (Personnel), Bihar, Patna.
5. The Inspector General of Police, Magadh Division, Gaya
6. The Senior Superintendent of Police, Gaya
7. The Enquiry Authority-Cum-Sub Divisional Police Officer, Neemchak
Bathani, Gaya.

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Abhishek Teerthankar, Advocate
Mr. Ankit Kumar, Advocate
Mr. Vinay Ranjan, Advocate
For the Respondent/s : Mr. P. K. Verma (AAG-3)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 15-01-2024

The present writ petition has been filed for quashing the
order dated 25.05.2021, passed by the Senior Superintendent of
Police, Gaya, whereby and whereunder the petitioner has been
awarded the punishment of two black marks, equivalent to



forfeiting increment in salary for one year, as also the order dated 20.07.2022, passed by the Director General of Police, Bihar, Patna, whereby and whereunder, the order of punishment dated 25.05.2021 has been annulled by exercising powers under Rule 853-A of the Bihar Police Manual and enhanced punishment has been inflicted upon the petitioner to the effect that he has been reverted to the basic pay-scale of Sub-Inspector of Police for three years and it has been further directed that the petitioner shall not be paid any amount, except the amount already paid during the period of suspension, apart from him being debarred from being posted as SHO for ten years.

2. The brief facts of the case, according to the petitioner, are that when he was posted as Officer-in-Charge, Roshanganj Police Station, District-Gaya, a joint raid was conducted by the petitioner and Anti Liquor Task Force (herein after referred to as the "ALTF"), whereupon 10 liters of country made Mahua liquor was recovered from Gair Mazrui Land, situated near the house of one Mahesh Bhuiyan, whereafter the said person was arrested and an FIR bearing Roshanganj P.S. Case No.130 of 2020 was lodged, under Section 30(a) of the Bihar Excise and Prohibition Act, 2016. The aforesaid incident had then led to framing of memo of charge against the petitioner by the Senior



Superintendent of Police, Gaya, vide Memo dated 04.01.2021, which was served upon the petitioner and then the petitioner had filed a detailed explanation before the enquiry officer. The enquiry officer had then conducted the departmental enquiry and an enquiry report dated 28.04.2021 was submitted wherein charges levelled against the petitioner had been found to have been partially proved. Thereafter, without either supplying the enquiry report or issuing any second show-cause notice to the petitioner, the impugned order of punishment dated 25.05.2021 was directly passed by the Senior Superintendent of Police, Gaya whereby the petitioner has been awarded the punishment of two black marks, equivalent to forfeiting increment in salary for one year.

3. The Director General of Police, Bihar, Patna had then reviewed the matter by exercising powers vested in him under Rule 853-A of the Bihar Police Manual, whereupon he has annulled the order of punishment dated 25.5.2021 and enhanced punishment has been inflicted upon the petitioner, by the impugned order dated 20.07.2022, to the effect that he has been reverted to the basic pay-scale of Sub-Inspector of Police for three years and it has been further directed that the petitioner shall not be paid any amount, except the amount already paid



during the period of suspension, apart from him being debarred from being posted as SHO for ten years.

4. The learned counsel for the petitioner has submitted that as far as the memo of charge is concerned, the same has not been issued by the competent authority, inasmuch as the competent disciplinary authority of the petitioner is the Inspector General of Police, Bihar, Patna. It is further submitted that the impugned order of punishment dated 25.05.2021 also suffers from the vice of having been passed in breach of the principle of natural justice and in violation of the provisions contained under Article 311 (2) of the Constitution of India, inasmuch as neither any second show-cause notice was issued to the petitioner nor a copy of the enquiry report indicting the petitioner, was ever served upon him, resulting in denial of reasonable opportunity to him to put forth his defence. In this connection, the learned counsel for the petitioner has referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Union of India vs. Mohd. Ramzan Khan***, reported in **(1991) 1 SCC 588**, as also the one rendered by Hon'ble Constitution Bench of the Hon' ble Apex Court in the case of ***Managing Director, ECIL, Hyderabad vs. B. Karunakar & Ors***, reported in **(1993) 4 SCC 727**.



5. As regards the impugned order dt. 18.07.2022, contained in Memo dated 20.07.2022, passed by the Director General of Police, Bihar, Patna, the Ld. Counsel for the petitioner has submitted that firstly the same does not depict consideration of the reply filed by the petitioner on 06.06.2022, to the show-cause dated 20.05.2022, issued by the Deputy Inspector General of Police, (Personnel), Bihar, Patna and moreover, the said show-cause notice dated 20.05.2022 does not contain any reason/ground, warranting enhancement in the quantum of punishment. Thus, it is contended that since the petitioner has not been informed about the reasons/grounds which have weighed in the mind of the authority so as to warrant enhancement in the punishment, the petitioner has been precluded from putting forth his defence to the same, hence, the entire exercise has been rendered illegal, apart from the fact that the impugned order dated 20.07.2022, passed by the Director General of Police, Patna is in any view of the matter an unreasoned order, inasmuch as the same has not taken into account the defence put forth by the petitioner.

6. *Per contra*, though the learned counsel for the respondent-State has opposed the present writ petition, but he has not been able to controvert the fact that neither any second show-cause



notice was issued to the petitioner nor a copy of the enquiry report was served upon him nor the show-cause notice dated 20.05.2022, issued by the Deputy Inspector General of Police, (Personal), Bihar, Patna, calling upon the petitioner to show-cause as to why the punishment be not enhanced, contains any reason/ground for enhancement of the punishment.

7. I have heard the learned counsel for the parties and gone through the materials on record. As far as the impugned order dated 25.05.2021, passed by the Senior Superintendent of Police, Gaya is concerned, the same has been passed without either issuance of any second show-cause notice upon the petitioner or service of enquiry report upon the petitioner, resulting in denial of reasonable opportunity to the petitioner to prove his innocence, leading to breach of the principles of natural justice, thus the same is contrary to law, hence is quashed, especially in view of the fact that the present case is squarely covered by the judgments rendered by the Hon'ble Supreme Court in the case of **B. Karunakar & Ors** (supra) and in the case of **Mohd. Ramzan Khan** (supra).

8. Now coming to the order dated 20.07.2022, passed by the Director General of Police, Bihar, Patna, annulling the order of punishment dated 25.05.2021 and enhancing the punishment,



this Court finds that firstly, the same is merely a narration of events, which does not take into account the defence put forth by the petitioner apart from being a cryptic and an unreasoned order, depicting complete non-application of mind and moreover, no clear, cogent and succinct reasons have been furnished for coming to a decision warranting enhancement of punishment, hence the same is also fit to be quashed. In this regard, reference be had to the judgment dated 21.09.2023, rendered by this Court in the case of ***Smt. Abha Kumari vs. the State of Bihar & Ors. (CWJC No.17189 of 2015)*** as also the one rendered by a co-ordinate Bench of this Court, reported in ***2022 (1) PLJR 169 (Janeshwar Sinha vs. State of Bihar and Others)***.

9. Yet another aspect of the matter is that the show-cause notice dated 20.05.2022, issued by the Deputy Inspector General of Police, (Personal), Bihar, Patna to the petitioner calling upon him to show cause as to why the punishment be not enhanced, neither contains any reason for differing with the view of the Senior Superintendent of Police, Gaya, who has inflicted punishment by the impugned order dated 25.05.2021, so as to warrant enhancement of the same nor indicates any reasons/grounds which might have weighed in the mind of the authority,



warranting enhancement in the punishment, thus admittedly, the petitioner has been precluded from grant of a reasonable opportunity to put forth his defense and prove his innocence qua the reasons which have weighed in the mind of the Director General of Police, Patna to differ with the order of punishment dated 25.05.2021, passed by the Senior Superintendent of Police, Gaya and enhance the punishment, which has resultantly caused violation of the principles of natural justice, thus, on this ground alone, the impugned order dated 20.07.2022, passed by the Director General of Police, Bihar Patna is fit to be set aside, hence, the same is quashed, accordingly.

10. Consequent to quashing of the order of punishment dated 25.05.2021, passed by the Senior Superintendent of Police, Gaya and setting aside of the order dated 20.07.2022, passed by the Director General of Police, Bihar Patna, this Court deems it fit and proper to remand the matter back to the disciplinary authority with liberty to proceed afresh from the stage of submission of the enquiry report dated 28.04.2021 by the enquiry officer. It may be observed that the petitioner shall be entitled to put forth all his defense afresh, including his assertion to the effect that the memo of charge itself is defective, inasmuch as the same has not been issued by his disciplinary



authority.

11. It is needless to state that the entire exercise, as aforesaid, shall be concluded, within a period of three months of receipt/production of a copy of this order failing which the departmental proceeding in question shall stand abated.

12. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09.03.2024
Transmission Date	NA

